
**COORDINATION AGREEMENT
FOR HABITAT EXPANSION
OF
CENTRAL VALLEY SPRING-RUN CHINOOK SALMON
AND
CALIFORNIA CENTRAL VALLEY STEELHEAD**

**BY AND BETWEEN
CALIFORNIA DEPARTMENT OF WATER RESOURCES
AND
PACIFIC GAS AND ELECTRIC COMPANY**

TABLE OF CONTENTS

	Page
ARTICLE 1 DEFINITIONS	2
1.1 Defined Terms	2
1.2 Interpretation	8
ARTICLE 2 COORDINATION AND DECISION MAKING	9
2.1 Coordinated Decisions	9
2.2 Unilateral Activities	10
2.3 Coordinated Decision Making Process	11
ARTICLE 3 COST SHARING	12
3.1 Costs to be Shared	12
3.2 Statements of Costs and Invoices	12
3.3 Payment of Eligible Costs	13
3.4 Third Party Claims	13
ARTICLE 4 PLANNING THROUGH IMPLEMENTATION OF HABITAT EXPANSION ACTION(S)	13
4.1 Planning Through Implementation of Habitat Expansion Action(s)	13
4.2 Staffing to Plan and Implement Habitat Expansion Action(s)	14
4.3 Notifications	14
4.4 Payment of Prevailing Wages	15
4.5 Insurance	15
ARTICLE 5 WITHDRAWAL	15
5.1 Withdrawal	15
5.2 Determination of Estimated Total Cost	15
5.3 Withdrawal Process	15
5.4 Cost Sharing on Withdrawal or Material Breach	16
5.5 Remedies after Withdrawal or Material Breach	17
ARTICLE 6 INDEMNIFICATION	18
6.1 Indemnification	18
6.2 Notice of Claim	19
6.3 Defense of Third Party Claims	19
6.4 Direct Claims	20

TABLE OF CONTENTS (continued)

	Page
6.5 Subrogation of Rights	20
ARTICLE 7 MISCELLANEOUS AGREEMENTS AND ACKNOWLEDGMENTS.....	20
7.1 Representations and Warranties	20
7.2 Force Majeure.....	21
7.3 Public and Agency Communications.....	22
7.4 Confidentiality.....	22
7.5 Audit Rights	22
7.6 Expenses.....	23
7.7 Entire Document.....	23
7.8 Counterparts	23
7.9 Severability	23
7.10 Assignability.....	23
7.11 Captions	23
7.12 Governing Law	23
7.13 Dispute Resolution	23
7.14 Limitations on Liability	26
7.15 Notices	26
7.16 Time is of the Essence	27
7.17 Termination.	27
7.18 No Third Party Beneficiaries.....	28
7.19 No Joint Venture; Independent Contractors.....	28
7.20 Construction of Agreement.....	28
7.21 Conflicts.....	29
7.22 Set-off Rights	29
7.23 Effective Date.....	29
7.24 Public Code 7110.....	29

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This **COORDINATION AGREEMENT FOR HABITAT EXPANSION OF CENTRAL VALLEY SPRING-RUN CHINOOK SALMON AND CALIFORNIA CENTRAL VALLEY STEELHEAD** (this "Agreement") is made by and between the California Department of Water Resources, an agency of the State of California ("DWR"), and Pacific Gas and Electric Company, a California corporation ("PG&E"). DWR and PG&E are referred to in this Agreement sometimes individually as a "Licensee" and collectively as the "Licensees".

BACKGROUND

A. DWR constructed and operates the Oroville Facilities, Federal Energy Regulatory Commission ("FERC") Project No. 2100 ("Oroville"). Oroville operates under a license originally issued by the Federal Power Commission ("FPC") on February 11, 1957, for a term of 50 years. Under requirements of the Federal Power Act ("FPA") and FERC regulations, DWR filed a timely application for a new license for Oroville on January 26, 2005, which application currently is pending before FERC. The original license for Oroville expired on January 31, 2007, and the project since that time has been operating under an annual license pursuant to Section 15 of the FPA.

B. PG&E owns and operates the Poe Hydroelectric Project No. 2107 ("Poe") under a license issued by the FPC on October 26, 1953, for a term of 50 years. Under the requirements of the FPA and FERC regulations, PG&E filed an application for a new license for Poe on October 2, 2001, which application currently is pending before FERC. The original license for Poe expired on September 30, 2003, and the project since that time has been operating under annual licenses pursuant to Section 15 of the FPA.

C. PG&E owns and operates the Upper North Fork Feather River Hydroelectric Project No. 2105 ("Upper North Fork Feather River") under a license issued by the FPC on January 24, 1955, for a term of 50 years. Under the requirements of the FPA and FERC regulations, PG&E filed an application for a new license for Upper North Fork Feather River on October 23, 2002, which application currently is pending before FERC. The original license for Upper North Fork Feather River expired on October 31, 2004, and the project since that time has been operating under annual licenses pursuant to Section 15 of the FPA.

D. PG&E owns and operates the Rock Creek-Cresta Hydroelectric Project No. 1962 ("Rock Creek-Cresta") under a license issued by FERC on October 24, 2001, which expires on September 30, 2034.

E. An issue raised in the relicensings of Oroville, Poe and Upper North Fork Feather River has been the potential for expansion of the amount of spawning, rearing and adult holding habitat available for Central Valley spring-run Chinook salmon (*Oncorhynchus tshawytscha*) and California Central Valley steelhead (*O. mykiss*). The Licensees, together with other participants in the relicensing proceedings, plan to enter into the "Habitat Expansion Agreement for Central Valley Spring-Run Chinook Salmon and California Central Valley Steelhead" (the "HEA"). The HEA creates certain obligations of the Licensees with respect to identifying, evaluating, selecting and implementing action(s) to expand such spawning, rearing and adult holding habitat in the Sacramento River Basin as an alternative to certain of the signatories to the HEA seeking Fish Passage in the relicensing of Oroville, Poe, and Upper North Fork Feather River, or through the amendment of the license for Rock Creek-Cresta.

F. In implementing the HEA through this Agreement, the Licensees desire to fulfill their obligations under, and achieve the habitat expansion goals of, the HEA in an efficient and cost-effective manner.

G. This Agreement evidences certain duties, obligations and responsibilities the Licensees have agreed to between themselves in order to implement obligations they have under the HEA.

NOW, THEREFORE, in consideration of the respective representations, warranties, covenants and agreements contained in this Agreement, intending to be legally bound, each of DWR and PG&E agrees as follows:

ARTICLE 1

DEFINITIONS

1.1 Defined Terms. The following terms when used in this Agreement with initial letters capitalized have the meanings set forth below:

"AAA" has the meaning set forth in Section 7.13(b).

"Affiliate" of a Person means any other Person that (a) directly or indirectly controls the specified Person; (b) is controlled by or is under direct or indirect common control with the specified Person; or (c) is an officer, director, employee, representative or agent or subsidiary of the Person. For the purposes of this definition, "control", when used with respect to any specified Person, means the power to direct the management or policies of the specified Person, directly or indirectly, whether through the ownership of voting securities, partnership or limited liability company interests, by contract, by operation of law, or otherwise.

"Agreement" means this Coordination Agreement for Habitat Expansion.

"Alternate" has the meaning set forth in Section 7.13(c)(i).

"Alternative Habitat Expansion Plan" has the meaning as provided in Sections 11.4.3.3. and 11.5 of the HEA.

"Arbitration" has the meaning set forth in Section 7.13(c).

"Arbitrator" has the meaning set forth in Section 7.13(c)(i).

"Article" means a numbered article of this Agreement. An Article includes all of the numbered sections of this Agreement that begin with the same number as that Article.

"Authorized Representative" means any person authorized to act on behalf of a Licensee with respect to the Steering Committee, as so designated by a Licensee in a Notice to the other Licensee. Each Licensee may change its designation of "Authorized Representatives" from time to time by providing Notice thereof.

"Business Day" means a day other than Saturday, Sunday or a day on which State offices are legally closed for business in the State of California.

"Claim(s)" has the meaning set forth in Section 6.1(a).

"Completion Fee" has the meaning set forth in Section 5.4(d)(i).

"Confidential Information" means information or data that the disclosing Licensee considers to be a trade secret, competitively sensitive, privileged, or which may be legally protected from disclosure under the California Public Records Act (Cal. Gov't Code Section 6250 *et seq.*) and may include written, verbal or visual information. In order to be considered Confidential Information, written information has to be identified at the time of the disclosure with an appropriate legend, marking, stamp or positive written identification on the face thereof as Confidential Information. However, inadvertent omission of a marking indicating a document is Confidential Information shall not be deemed a waiver of the intent of the Party providing the Confidential Information if subsequent thereto the Party indicates that the document was intended to be Confidential Information at the time it was disclosed. No disclosure by the Licensee of such unmarked Confidential Information prior to receiving such subsequent indication of confidentiality shall be a breach of this Agreement. In order to be considered Confidential Information, verbal or visual information has to be so identified at the time of the verbal or visual disclosure and the disclosing Licensee will confirm with the receiving Licensee in writing within thirty (30) days of the disclosure and specifically identify the Confidential Information previously disclosed. Magnetic tape, computer software or any other similar type of machine readable format will be considered as a verbal disclosure and will only be considered Confidential Information to the extent the disclosing Licensee complies with the requirements for verbal disclosures set forth above, including the thirty (30) day notification requirement. Confidential Information does not include information or data that:

- (a) was in the public domain at the time of the disclosure or is subsequently made available to the general public without restriction and without breach of this Agreement by the receiving Licensee;

- (b) was known by the receiving Licensee at the time of disclosure without restrictions on its use or independently developed by the receiving Licensee, as shown by adequate documentation; or
- (c) is disclosed to the receiving Licensee by a third Person without restriction and without breach of any agreement or other duty to keep the information confidential.

"Consent" means any consent, approval or authorization of any Person other than a Governmental Authority.

"Contingent Liabilities" has the meaning set forth in Section 5.4(b).

"Decision" has the meaning set forth in Section 2.1.

"Direct Claim" means any Claim by an Indemnified Licensee which does not result from a Third Party Claim.

"Dispute Resolution" has the meaning set forth in Section 7.13.

"DWR" means the California Department of Water Resources.

"Eligible Costs" has the meaning set forth in Section 3.1.

"Environmental Laws" means any Governmental Rules relating to or imposing liability or standards of conduct with respect to the protection of human health, safety or the environment (including ambient air, soil, surface water, ground water, wetlands, land or subsurface strata), including Governmental Rules relating to: (a) emissions, discharges, releases or threatened releases of hazardous substances into the environment; (b) manufacture, generation, processing, distribution, use, treatment, storage, disposal, transport or handling of hazardous substances; and (c) exposure to hazardous substances or environmental conditions, including Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. §§9601 *et seq.*) ("CERCLA"), the Hazardous Materials Transportation Act (49 U.S.C. §§ 5101, *et seq.*), the Resource Conservation and Recovery Act (42 U.S.C. §§ 6901 *et seq.*), the Federal Water Pollution Control Act (33 U.S.C. §§ 1251, *et seq.*), the Clean Air Act (42 U.S.C. §§ 7401 *et seq.*), the Toxic Substances Control Act (15 U.S.C. §§ 2601 *et seq.*), the Oil Pollution Act (33 U.S.C. §§ 2701 *et seq.*), the Occupational Safety and Health Act (29 U.S.C. §§ 651 *et seq.*), the Emergency Planning and Community Right-to-Know Act (42 U.S.C. §§ 11001 *et seq.*), the Endangered Species Act (16 U.S.C. §§ 1531, *et seq.*), the Porter-Cologne Water Quality Control Act (Cal. Water Code §§ 13000 *et seq.*), the Safe Drinking Water and Toxic Enforcement Act of 1986 (Cal. Health & Safety Code §§ 25249.5, *et seq.*), the Hazardous Substance Account Act (Cal. Health & Safety Code §§ 25300, *et seq.*), the Hazardous Waste Control Act (Cal. Health & Safety Code §§ 25100, *et seq.*), the California Clean Air Act (Cal. Health & Safety Code §§ 39000, *et seq.*), permission to use State lands (Cal. Pub. Resources Code §§ 6001 *et seq.*), the California Endangered Species Act (Cal. Fish & Game Code §§ 2050, *et seq.*), Stream Bed Alteration law (Cal. Fish & Game Code §§ 1600 *et seq.*) and the California Native Plant Protection Act (Cal. Fish & Game Code §§ 1900, *et seq.*).

"Estimated Eligible Costs" has the meaning set forth in Section 5.2.

"Estimated Other Costs" has the meaning set forth in Section 5.2.

"Estimated Total Cost" has the meaning set forth in Section 2.1(u).

"Executive(s)" has the meaning set forth in Section 7.13(a)(i).

"Feather River Hydroelectric Projects" means the Oroville, Poe, Rock Creek-Cresta, and Upper North Fork Feather River hydroelectric projects.

"FERC" means the Federal Energy Regulatory Commission.

"Fish Passage" means upstream or downstream movement of fish past any or all facilities of the Feather River Hydroelectric Projects, except as provided in Section 12.7 of the HEA.

"Force Majeure Event" means any event or circumstance which wholly or partly prevents or delays the performance of any material obligation arising under this Agreement, but only if and to the extent: (a) such event is not within the reasonable control, directly or indirectly, of the Licensee seeking to have its performance obligation(s) excused thereby; (b) the Licensee seeking to have its performance obligation(s) excused thereby has taken all reasonable precautions and measures in order to prevent or avoid such event or mitigate the effect of such event on such Licensee's ability to perform its obligations under this Agreement and which by the exercise of due diligence such Licensee could not reasonably have been expected to avoid and which by the exercise of due diligence it has been unable to overcome; and (c) such event is not the direct or indirect result of the negligence or the failure of, or caused by, the Licensee seeking to have its performance obligations excused thereby. Events that, subject to the foregoing, could qualify as Force Majeure Events include flooding, lightning, landslide, earthquake, fire, drought, explosion, epidemic, quarantine, storm, hurricane, tornado, other natural disaster or adverse weather-related events, war (declared or undeclared), strikes, acts of a public enemy (including acts of terrorism), blockade, insurrection, revolution, expropriation or confiscation, and unavailability of fuel, power or raw materials.

"FPA" means the Federal Power Act.

"FPC" means the former Federal Power Commission, predecessor to the FERC.

"Governmental Approvals" means all consents and approvals of Governmental Authorities other than DWR necessary under applicable Governmental Rules for the consummation of the transactions contemplated in this Agreement and the implementation of the HEA, including any waiver, exemption, variance, franchise, permit, authorization, agreement, consent, ruling, certification, lease, license or similar order of or from, or filing or registration with, or notice to, any Governmental Authority that authorizes, approves, limits or imposes conditions upon a specified activity.

"Governmental Authority" means any federal, state, local or other governmental, regulatory or administrative agency, governmental commission, department, board, subdivision,

court, tribunal, or other governmental arbitrator, arbitral body or other authority other than DWR.

"Governmental Rules" means all applicable laws, statutes, treaties, rules, regulations, ordinances, codes, judgments, enactments, decrees, injunctions, writs and orders, decisions, Governmental Approvals, directives and agreements, authorizations or other restrictions of or enacted by any Governmental Authority (including common law), or any binding interpretation or administration of any of the foregoing.

"Habitat Expansion Plan" has the meaning as provided in Article 4 of the HEA.

"Habitat Expansion Threshold" has the meaning provided in Section 2.2 of the HEA, namely the expansion of "spawning, rearing, and adult holding habitat sufficiently to accommodate an estimated net increase of 2,000 to 3,000 Spring-Run for spawning" in the Sacramento River Basin.

"Indemnified Group" has the meaning set forth in Section 6.1(a).

"Indemnified Licensee" has the meaning set forth in Section 6.2.

"Indemnifying Licensee" has the meaning set forth in Section 6.1(a).

"Interest Rate" means the rate per annum equal to the "Monthly" Federal Funds Rate (as reset on a monthly basis based on the latest month for which such rate is available) as reported in Federal Reserve Bank Publication H.15-519, or similar successor federal government publication.

"Licensee" and "Licensees" means either or both DWR and PG&E.

"Manager" has the meaning set forth in Section 7.13(a)(i).

"Material Breach of the HEA" means a material breach of the HEA that is not waived or cured, such that in the case of a material breach by one Licensee the provisions in Section 11.4.3 of the HEA apply, and in the case of a material breach by both Licensees the other parties to the HEA may seek to impose Fish Passage in the Licensees' Feather River Hydroelectric Projects.

"NMFS" means the United States Department of Commerce National Marine Fisheries Service.

"Notice" means a communication pursuant to Section 7.15.

"Notice of Claim" has the meaning set forth in Section 6.2.

"Notice of Intent to Withdraw" has the meaning set forth in Section 5.3(a).

"Operating Licensee" has the meaning set forth in Section 7.13(d).

"Oroville" has the meaning set forth in the recitals to this Agreement.

"Other Costs" has the meaning set forth in Section 3.2.

"Pay", "Paid" or "Payment" refers to the incurrence of expenses for a Licensee's own account or the payment of money by one Licensee as reimbursement to the other Licensee.

"Person" means an individual, partnership, joint venture, corporation, limited liability company, trust, association or unincorporated organization, or any Governmental Authority.

"PG&E" means the Pacific Gas and Electric Company, a California corporation.

"Planning through Implementation" includes the activities described in Section 4 of the HEA, including any required ongoing operations and maintenance activities for the approved habitat expansion action(s).

"Poe" has the meaning set forth in the recitals to this Agreement.

"Referral Date" has the meaning set forth in Section 7.13(a)(i).

"Remediation" means any or all of the following activities to the extent they relate to or arise from the presence of hazardous substances in the soil or groundwater or both, or in above-ground or underground structures, equipment, fixtures or personal property, at the Project: (a) performing any activities that are remedial or removal actions under CERCLA, Hazardous Substances Account Act (Cal. Health & Safety Code §§ 25300, *et seq.*), or other applicable Environmental Laws or result in response costs as defined under CERCLA, Hazardous Substances Account Act (Cal. Health & Safety Code §§ 25300, *et seq.*), or other applicable Environmental Laws, including monitoring, investigation, cleanup, containment, remediation, removal, mitigation, response or restoration work; (b) obtaining any Governmental Approvals or Consents necessary to conduct any such work; (c) preparing and implementing any plans or studies for such work; (d) obtaining a written notice from all Governmental Authorities with jurisdiction over the relevant locations under Environmental Laws that no material additional work is required by such Governmental Authority; and (e) any other activities reasonably determined necessary or appropriate or required under Environmental Laws to address the presence of hazardous substances.

"Rock Creek-Cresta" has the meaning set forth in the recitals to this Agreement.

"Standard Industry Practice" means any of the practices, methods and acts engaged in or approved by a significant portion of the industry engaged in similar work during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time of the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Standard Industry Practice does not require the optimum practice, method or act to the exclusion of all others, but rather is intended to include acceptable practices and methods or acts accepted in utility, construction and/or habitat restoration industries, as applicable; nor does it necessarily mean that Standard Industry Practice was not followed in the event of negligently caused damage or injury.

"Steering Committee" has the meaning set forth in Section 2.3(a).

"Third Party Claim" means a Claim by a Person other than DWR and PG&E, including any Claim for the costs of conducting Remediation or seeking an order or demanding that a Person undertake Remediation.

"Upper North Fork Feather River" has the meaning set forth in the recitals to this Agreement.

"Withdraw" and "Withdrawal" have the meanings set forth in Section 5.1.

1.2 Interpretation. In this Agreement, unless a clear contrary intention appears:

- (a) the singular includes the plural and vice versa;
- (b) reference to any Person includes such Person's successors and assigns but, if applicable, only if such successors and assigns are permitted by this Agreement, and reference to a Person in a particular capacity excludes such Person in any other capacity;
- (c) reference to any gender includes each other gender;
- (d) reference to any agreement (including this Agreement), document or instrument means such agreement, document or instrument as amended or modified and in effect from time to time in accordance with the terms thereof and, if applicable, the terms hereof;
- (e) reference to any Article, Section or definition means such Article, Section or definition of this Agreement, and references in any Article, Section or definition to any clause means such clause of such Article, Section or definition;
- (f) "hereunder," "hereof," "hereto" and words of similar import are references to this Agreement as a whole and not to any particular Article, Section or other provision hereof or thereof;
- (g) "including" (and correlative terms) means "including without limitation" and "including, but not limited to";
- (h) examples shall not be construed to limit, expressly or by implication, the matter they illustrate;
- (i) reference to any law (including statutes and ordinances) means such law as amended, modified, codified or reenacted, in whole or in part, and in effect from time to time, including rules and regulations promulgated thereunder; and
- (j) except where the context otherwise requires, "or" shall have the inclusive meaning frequently designated by "and/or".

ARTICLE 2

COORDINATION AND DECISION MAKING

2.1 Coordinated Decisions. This Agreement contemplates that the Licensees will coordinate their decision making and implementation of actions to achieve the goals of the HEA. However, each Licensee shall make its own independent determinations regarding any decision covered by this Agreement, after exercising its own independent judgment, as provided in this Article 2. Except as may otherwise be required by law and except to the extent provided in Section 2.2, the Licensees agree that they will, unless otherwise agreed by them, closely coordinate in making all decisions required to be made by them from the Planning through Implementation phases, and thereafter as necessary, of habitat expansion action(s) under Section 4 of the HEA by following the coordinated decision making process set forth in Section 2.3. To the extent the Licensees' coordination results in mutual agreement, that agreement shall constitute a "Decision" for purposes of this Agreement. The subject matters that shall be subject to the coordinated decision making process set forth in Section 2.3 include, unless otherwise agreed by the Licensees:

(a) evaluation and selection of habitat expansion action(s) to expand spawning, rearing and adult holding habitat for Central Valley spring-run Chinook salmon and California Central Valley steelhead in the Sacramento River Basin, as contemplated by Section 1.2 of the HEA;

(b) determination of whether selected habitat expansion action(s) will be implemented by the Licensees individually, jointly or through cooperative efforts with others;

(c) preparation of draft, final, and approved "Habitat Expansion Plans" or jointly proposed "Alternative Habitat Expansion Plan", as such terms are used in the HEA;

(d) consultation with the parties to the HEA and third parties concerning the draft Habitat Expansion Plans and any jointly proposed Alternative Habitat Expansion Plan;

(e) estimation of each habitat expansion action's contribution to meeting the Habitat Expansion Threshold;

(f) selection of one or more independent experts to estimate the contribution to meeting the Habitat Expansion Threshold by the selected habitat expansion action(s);

(g) correction of any deficiencies in the final Habitat Expansion Plan or jointly proposed Alternative Habitat Expansion Plan identified by NMFS;

(h) preparation of feasibility-level designs and cost estimates for habitat expansion action(s);

(i) preparation of semi-annual status reports to be submitted under the HEA throughout its preliminary design, final design and permitting, and implementation phases;

- (j) preparation of the Preliminary Design Report required by Sections 4.3 and 4.4 of the HEA;
- (k) preparation of bid-level designs and cost estimates for habitat expansion action(s);
- (l) obtaining necessary Governmental Approvals, Consents, and other rights to implement the approved Habitat Expansion Plan or jointly proposed Alternative Habitat Expansion Plan;
- (m) preparation of the Final Design and Permitting Report required by Sections 4.5 and 4.6 of the HEA;
- (n) implementation of any Habitat Expansion Plan or jointly proposed Alternative Habitat Expansion Plan approved under the HEA;
- (o) preparation of the Final Report required by Section 4.7 of the HEA;
- (p) performance of functional start-up and testing of habitat expansion action(s);
- (q) preparation of the Final Test Report required by Sections 4.8 and 4.9 of the HEA;
- (r) performance of necessary actions identified by NMFS to correct functional deficiencies in habitat expansion action(s);
- (s) operation and maintenance of the habitat expansion action(s) to the extent DWR and PG&E agree that such operation and maintenance shall be managed or conducted jointly;
- (t) providing notices as required of the Licensees by the HEA;
- (u) preparation under Section 11.1 of the HEA of estimates of the net present value (January 2006 cost basis) of the life-cycle cost of implementing all of the recommended or approved habitat expansion action(s) (the "Estimated Total Cost");
- (v) litigation with any construction or other third party contractor hired pursuant to this Agreement; and
- (w) the activities described in Sections 4.1 and 4.2 of this Agreement.

2.2 Unilateral Activities. The coordinated decision making process set forth in Section 2.3 shall not apply to the following activities, which shall be within the unilateral discretion of the Licensee undertaking them unless otherwise agreed by the Licensees:

(a) activities relating to Withdrawal under Article 5 and those under Section 11 of the HEA;

(b) activities relating to any Alternative Habitat Expansion Plan proposed by one Licensee to NMFS under Sections 11.4.3.3 or 11.5.1 of the HEA;

(c) activities related to the initiation of and participation in dispute resolution procedures under the HEA;

(d) activities related to litigation regarding the compliance of other parties with the HEA;

(e) activities relating to indemnification under Article 6 of this Agreement, and;

(f) activities relating to obligations under the HEA by one Licensee after the other Licensee has Withdrawn or materially breached the HEA.

2.3 Coordinated Decision Making Process.

(a) Steering Committee. PG&E and DWR shall establish a committee (the "Steering Committee") consisting of one representative and one alternate from each Licensee with the authority to represent it in discussions concerning the implementation of this Agreement. Each such representative and alternate shall be an Authorized Representative. The Steering Committee shall meet as necessary to coordinate the activities of PG&E and DWR pursuant to this Agreement, to make Decisions that are within the authority of the Authorized Representatives of each Licensee, and to make recommendations to PG&E and DWR managements with respect to Decisions which are not within that authority. The Steering Committee shall meet no less frequently than quarterly, unless otherwise agreed by the Steering Committee. Either Licensee may call for a Steering Committee meeting at any time upon no less than five (5) Business Days written Notice to the other Licensee. The Steering Committee shall adopt any necessary procedures for its meetings. Unless otherwise agreed by the Steering Committee, its meetings shall be held alternately in San Francisco and Sacramento. The Authorized Representatives of each Licensee may invite staff members, consultants and others to attend meetings of the Steering Committee all of which shall be bound to the Confidentiality provisions of this Agreement; provided, however, that only one Authorized Representative from each Licensee shall be polled during the process of making Decisions. At least one Authorized Representative for each Licensee shall attend each meeting of the Steering Committee. By mutual agreement, these meetings may occur by telephone. Decisions and recommendations may be made by the Steering Committee without a meeting upon the written concurrence of at least one Authorized Representative from each Licensee.

(b) Decisions. The Steering Committee shall meet and discuss each proposed Decision. If at least one Authorized Representative of each Licensee has the authority to bind that Licensee with respect to a given Decision, then the Steering Committee may make that Decision. If the Authorized Representatives from one or both Licensees do not have that authority, then the Steering Committee shall meet with a goal of reaching an agreed-upon

recommendation, which recommendation shall be conveyed by the Licensee's Authorized Representatives to their management for independent approval. The Steering Committee shall adopt any necessary procedures for the submission of its recommendations to each Licensee's management for approval. If the Steering Committee cannot agree on a recommendation, the Authorized Representatives shall submit the issue for Dispute Resolution pursuant to Section 7.13 unless otherwise agreed by the Authorized Representatives for the Licensees. If the Steering Committee makes a recommendation to the Licensees' managements, but either PG&E or DWR fails to approve such a recommendation within thirty (30) days, unless a longer period is adopted by the Steering Committee, then the recommendation shall be reconsidered by the Steering Committee. If (i) the Steering Committee fails to agree upon a revised recommendation with respect to any such proposed Decision which is reconsidered by it, or (ii) a revised recommendation with respect to any such proposed Decision is not approved by PG&E and DWR managements within thirty (30) days, unless a longer period is adopted by the Steering Committee, then the proposed Decision shall be submitted for Dispute Resolution pursuant to Section 7.13 unless otherwise agreed by the PG&E and DWR Authorized Representatives. Either Licensee may extend the timeframes in this Section 2.3 by up to thirty (30) days by providing one or more Notice(s) to the other Licensee.

(c) Decisions after Withdrawal. If a Licensee Withdraws under Article 5, the coordinated decision making process shall no longer apply.

ARTICLE 3

COST SHARING

3.1 Costs to be Shared. Unless otherwise stated in this Agreement, PG&E and DWR shall each be obligated to Pay one-half of the Eligible Costs associated with their performance of their obligations under the HEA. "Eligible Costs" means those reasonable costs incurred by PG&E or DWR with respect to habitat expansion action(s) pursuant to Decisions, including costs incurred in their Planning through Implementation of habitat expansion action(s) under Section 4 of the HEA (including long-term operations and maintenance expenses and capital costs), but shall not include either Licensee's internal or external costs, including legal fees, incurred (a) to negotiate the HEA, or (b) to negotiate or administer this Agreement. Eligible Costs shall only include internal costs incurred by a Licensee to implement the HEA to the extent such costs are authorized pursuant to a Decision or under a separate agreement entered into by DWR and PG&E. Eligible Costs shall include Third Party Claims only to the extent provided in Section 3.4.

3.2 Statements of Costs and Invoices. Within sixty (60) days after the end of each applicable calendar quarter or such longer period of time as may be agreed to by the Licensees, each Licensee shall submit to the other Licensee a detailed statement which includes to the maximum extent practicable the Eligible Costs incurred by it and, separately stated, all other internal and external costs of such Licensee that are not included in Eligible Costs but which have been incurred by it after the execution of the HEA that are directly related to the HEA or this Agreement ("Other Costs"), including for each category of costs separate statements of both the total of all such costs incurred by it to date and such costs that have been incurred by it

during such calendar quarter. The statement of costs shall also include a separate invoice for one-half of the Licensee's Eligible Costs incurred during the quarter. Each Licensee shall be entitled to such additional information in support of each such statement as it may reasonably request from the other Licensee. To the extent that Eligible Costs or Other Costs are not included by a Licensee in its statement for the time period covered by such statement, it shall include such costs in the first statement it issues after it becomes practicable to include such costs, identifying the period in which such costs were incurred.

3.3 Payment of Eligible Costs. Within forty-five (45) days of receipt of an invoice as provided in Section 3.2 or such longer period of time as may be agreed to by the Licensees, each Licensee shall: (a) Pay the other Licensee its share of any unpaid and undisputed portion of Eligible Costs incurred by the other Licensee; and (b) provide Notice of any dispute regarding the statement of costs, including whether costs were properly considered Eligible Costs. In the event an invoice is disputed, the Licensees shall resolve the dispute as provided in Section 7.13. Payment of the disputed amount shall not be required until the dispute is resolved. The Licensees agree to use good faith efforts to resolve the dispute as soon as possible. Upon resolution of the dispute, any required Payment shall be made within forty-five (45) days of such resolution along with interest accrued at the Interest Rate from and including the due date to but excluding the date paid. Overpayments shall be returned upon request or deducted by the Licensee receiving such overpayment from subsequent Payments, with interest accrued at the Interest Rate from and including the date of such overpayment to but excluding the date repaid or deducted by the Party receiving such overpayment.

3.4 Third Party Claims. All Third Party Claims arising out of the Planning through Implementation of habitat expansion action(s) taken pursuant to Decisions shall be Eligible Costs except to the extent such Third Party Claims arise out of one Licensee's gross negligence, intentional misconduct, or conduct inconsistent with Standard Industry Practice in the State of California appropriate to the activity performed.

ARTICLE 4

PLANNING THROUGH IMPLEMENTATION OF HABITAT EXPANSION ACTION(S)

4.1 Planning Through Implementation of Habitat Expansion Action(s). Subject to all the terms and conditions of this Agreement, DWR and PG&E agree to plan and implement any and all habitat expansion action(s) that they are required to implement under the HEA in accordance with the requirements of the HEA, including obtaining any necessary real property interests, Governmental Approvals and Consents, and to cause such habitat expansion action(s) to be implemented and placed into operation in accordance with the HEA, all as further described in this Agreement. The determinations of the manner in which this Section 4.1 shall be implemented shall be subject to the coordinated decision making process set forth in Section 2.3. The Licensees' obligations under this Article 4 shall include the following:

(a) Planning and Administration. Preparing all plans and studies, entering into all arrangements for professional and implementation services, negotiating and entering into all contracts and agreements, maintaining the books, documents and records relating to the habitat expansion action(s) being planned and implemented, and performing or causing to be

performed all administrative services, in each case necessary or appropriate for such habitat expansion action(s) to be planned and implemented as required by the HEA;

(b) Asset Acquisition. Acquisition of all assets (whether tangible or intangible), rights, agreements, Governmental Approvals, Consents and other interests required for the Planning through Implementation of the habitat expansion action(s) under Section 4 of the HEA, all as contemplated by the HEA and this Agreement;

(c) Governmental Authorizations and Consents. Obtaining all Governmental Authorizations and Consents required for the implementation of the habitat expansion action(s);

(d) Implementation of Habitat Expansion Action(s). If necessary and appropriate, entering into, performing the owner's obligations under, and causing the habitat expansion action(s) to be implemented pursuant to appropriate engineering, procurement or construction contracts with qualified and creditworthy contractors. Such contracts shall include detailed scopes of work and technical specifications for the relevant habitat expansion action(s). Such contracts shall include customary and usual owner's rights with respect to the oversight and management of the work to be performed, which rights shall be asserted by the contracting Licensee in consultation with the other Licensee, unless otherwise agreed by the Licensees;

(e) Schedules. Developing appropriate schedules for, and reports with respect to, the implementation of habitat expansion action(s);

(f) Industry Standards. Assuring that all habitat expansion action(s) planned or implemented pursuant to this Section 4 are undertaken consistent with Standard Industry Practice.

4.2 Staffing to Plan and Implement Habitat Expansion Action(s). Determinations of the extent to which habitat expansion action(s) shall be planned and implemented by the Licensees independently or jointly or through cooperative efforts with others shall be subject to the coordinated decision making process set forth in Section 2.3. To the extent the Licensees Decide to plan and implement habitat expansion action(s) jointly, they anticipate that such Planning through Implementation will be done primarily through independent consultants or contractors to be hired independently or jointly by the Licensees.

4.3 Notifications. Each Licensee, upon receiving actual notice thereof, shall promptly give Notice to the other Licensee of: (a) any proceeding, actions, claims, suits or investigations pending or threatened relating to any habitat expansion action(s) under Section 4 of the HEA or the implementation of the HEA; (b) any such process against it that challenges or could affect the Planning through Implementation of any habitat expansion action(s) under Section 4 of the HEA or the performance of the HEA or this Agreement; (c) all notices, correspondence and other communications from any Governmental Authority with respect to the Planning through Implementation of any habitat expansion action(s) under Section 4 of the HEA or the implementation of the HEA or this Agreement; (d) all material notices, correspondence and other communications from any contractor or counterparty to any agreement entered into to implement the HEA or this Agreement; and (e) the occurrence of any event which has had or could possibly have a material adverse effect on any habitat expansion action(s) under Section 4 of the HEA or the implementation of the HEA or this Agreement.

4.4 Payment of Prevailing Wages. With respect to all construction work performed as contemplated by this Agreement, the Licensee contracting for such work shall cause the contractor (and its subcontractors performing work under the relevant contract) to pay "prevailing wages" as may be required by applicable Governmental Rules.

4.5 Insurance. The Licensees shall cause all contractors performing work contemplated by this Agreement to maintain such insurance as the Licensees may determine to be appropriate and shall require that both Licensees be named as additional insureds on all such insurance policies to the extent such endorsements are available on commercially reasonable terms.

ARTICLE 5

WITHDRAWAL

5.1 Withdrawal. As provided in Section 11.1 of the HEA, if DWR and PG&E determine that the Estimated Total Cost exceeds \$15 million, either DWR or PG&E may withdraw from the HEA (to "Withdraw" or a "Withdrawal").

5.2 Determination of Estimated Total Cost.

(a) DWR and PG&E agree that each determination of the Estimated Total Cost shall be subject to the coordinated decision making process set forth in Section 2.3.

(b) Each determination of the Estimated Total Cost under this Section 5.2 shall equal the sum of the Licensees' determinations of: (i) of the net present value (January 2006 cost basis) of the life-cycle actual and estimated Eligible Costs of Planning through Implementation all of the recommended or approved habitat expansion action(s), including contingencies determined by the Licensees ("Estimated Eligible Costs"), and (ii) all actual and estimated Other Costs of Planning through Implementation of all of the recommended or approved habitat expansion action(s), including contingencies determined by the Licensees ("Estimated Other Costs") through the term of this Agreement.

(c) Either Licensee may initiate a determination of Estimated Eligible Costs or Estimated Other Costs at any time prior to the date which is 120 days before the final date on which a Licensee may give a pre-withdrawal notice under Section 11.3.1 of the HEA.

5.3 Withdrawal Process.

(a) If a Licensee believes the Estimated Total Cost exceeds \$15 million and it desires to Withdraw, it shall give the other Licensee Notice of its intent to withdraw (the "Notice of Intent to Withdraw") at least ninety (90) days prior to the final date on which a Licensee may give a pre-withdrawal notice under Section 11.3.1 of the HEA. The Notice of Intent to Withdraw shall include a detailed statement of the Estimated Total Cost. This ninety (90) day notice period may be excused only if the Licensee providing the Notice of Intent to Withdraw first becomes aware of significant and relevant new information after the ninety (90) day period expires,

provided that the Notice of Intent to Withdraw is provided as soon as may be practicable under the circumstances.

(b) If one Licensee provides Notice of Intent to Withdraw under Section 5.3(a) and the other Licensee disputes whether the Estimated Total Cost exceeds \$15 million, the other Licensee shall give Notice of the dispute within ten (10) days after the effective date of the Notice of Intent to Withdraw. During this ten (10) day period, the Licensee that provided the Notice of Intent to Withdraw shall not provide other parties to the HEA with pre-withdrawal notice pursuant to Section 11.3.1 of the HEA. Resolution of a dispute under this Section 5.3(b) shall be subject to the binding arbitration procedures set forth in Section 7.13(c) without any requirement of prior compliance with Sections 7.13(a) or (b).

(c) If a Licensee provides Notice that it disputes whether the Estimated Total Cost exceeds \$15 million pursuant to Section 5.3(b), the Licensee that provided the Notice of Intent to Withdraw shall not provide other parties to the HEA with pre-withdrawal notice pursuant to Section 11.3.1 of the HEA until either: (i) the dispute is resolved; or (ii) five (5) days before the final date on which a Licensee may give a pre-withdrawal notice under Section 11.3.1 of the HEA, whichever occurs first.

5.4 Cost Sharing on Withdrawal or Material Breach of the HEA.

(a) Determination of Actual Eligible Costs Upon Withdrawal or Material Breach of the HEA. Upon the Withdrawal or Material Breach of the HEA by one or both Licensees the Licensees shall determine the amount of actual Eligible Costs that were: (i) incurred by each Licensee as of the effective date of the first such Withdrawal or Material Breach of the HEA; and (ii) incurred thereafter by each Licensee pursuant to commitments made by one or both Licensees prior to the first such Withdrawal or Material Breach of the HEA. As soon as practicable after the first such Withdrawal or Material Breach of the HEA, the Licensees shall determine the amount of any Payment for Eligible Costs due from one Licensee to the other pursuant to this Section 5.4. If one Licensee has Paid more than it is obligated to Pay under this Section 5.4, then the other Licensee shall Pay the first Licensee the amount of the overpayment.

(b) Contingent Liabilities. In addition to Paying its share of actual Eligible Costs as provided in Sections 5.4(c) and (d) below, a Licensee who Withdraws or commits a Material Breach of the HEA shall remain obligated to pay one-half of all Eligible Costs incurred after the effective date of its Withdrawal or Material Breach of the HEA to the extent such costs result unavoidably from events that occurred prior to the effective date of the Withdrawal or Material Breach of the HEA ("Contingent Liabilities").

(c) Cost Sharing Responsibility On Joint Withdrawal or Material Breach. If both Licensees jointly Withdraw or commit a Material Breach of the HEA, each Licensee shall be obligated to Pay one-half of the Eligible Costs and Contingent Liabilities determined in accordance with Sections 5.4(a) and 5.4(b). Upon such Withdrawal or Material Breach of the HEA, this Agreement shall terminate. A Withdrawal or Material Breach of the HEA shall be considered joint if one Licensee Withdraws or commits a Material Breach of the HEA and the other Licensee does not within a reasonable period of time elect under Section 11.4.3 of the HEA

to either perform the full scope of any Approved Habitat Expansion Plan or propose to NMFS an Alternative Habitat Expansion Plan that meets one-half of the Habitat Expansion Threshold.

(d) Cost Sharing Responsibility On Unilateral Withdrawal or Material Breach.

(i) If only one Licensee Withdraws or commits a Material Breach of the HEA and the remaining Licensee elects to perform the full scope of any Approved Habitat Expansion Plan under Section 11.4.3 of the HEA, then each Licensee shall be obligated to Pay one-half of the Eligible Costs and Contingent Liabilities determined in accordance with Sections 5.4(a) and 5.4(b). In addition, in consideration of the remaining Licensee undertaking the implementation of the Approved Habitat Expansion Plan to the benefit of both Licensees, the Licensee who Withdraws or commits a Material Breach of the HEA shall pay the remaining Licensee a fee for such implementation equal to one-half of any additional actual Eligible Costs incurred by the remaining Licensee after the Withdrawal or Material Breach of the HEA for the Planning through Implementation of the Approved Habitat Expansion Plan (the "Completion Fee"), provided that in no event shall the Payment of the Completion Fee (excluding the Licensee's share of Contingent Liabilities) cause the total amount Paid under Articles 3 and 5 of this Agreement by the Licensee who Withdraws or commits a Material Breach of the HEA to exceed \$12.5 million, unless otherwise agreed to by the Parties. The Completion Fee shall be documented and Paid in the same manner as Eligible Costs are documented and Paid by the Licensees under Sections 3.2 and 3.3 when neither Licensee Withdraws or commits a Material Breach of the HEA.

(ii) If only one Licensee Withdraws or commits a Material Breach of the HEA and the other Licensee elects under Paragraph 11.4.3 of the HEA to propose to NMFS an Alternative Habitat Expansion Plan that meets one-half of the Habitat Expansion Threshold, then each Licensee shall be obligated to Pay one-half of the Eligible Costs determined in accordance with Section 5.4(a). The Licensee who Withdraws or commits a Material Breach of the HEA shall have no obligation to Pay any Eligible Costs incurred after the effective date of the Withdrawal or the date of the Material Breach of the HEA but shall remain liable for one-half of Contingent Liabilities determined in accordance with Section 5.4(b).

5.5 Remedies after Withdrawal or Material Breach of the HEA. If only one Licensee Withdraws or commits a Material Breach of the HEA and the remaining Licensee elects under the HEA to perform the full scope of any Approved Habitat Expansion Plan under Section 11.4.3 of the HEA, then the Licensee who Withdraws or commits a Material Breach of the HEA shall have the following exclusive remedies in the event: (i) the remaining Licensee fails fully to implement the Approved Habitat Expansion Plan under the HEA; and (ii) NMFS does not accept partial performance as fully satisfying both Licensees' obligations under the HEA:

(a) Termination. The right to terminate this Agreement;

(b) Indemnification. The right to indemnification from the remaining Licensee as provided in Section 6.1(b);

(c) Return of Completion Fee. In the case of a Withdrawing Licensee, the right to receive a Payment from the remaining Licensee equal to any Completion Fee it has Paid, but not its one-half share of Eligible Costs and Contingent Liabilities as determined in Sections 5.4(a) and 5.4(b). This right shall not extend to a Licensee that commits a Material Breach of the HEA.

ARTICLE 6

INDEMNIFICATION

6.1 Indemnification.

(a) Indemnification Generally. Each Licensee (the "Indemnifying Licensee") shall indemnify and hold harmless the other Licensee and its parents and Affiliates and each of their officers, directors, employees, attorneys, agents and successors and assigns (collectively, the "Indemnified Group"), from and against any and all damages, claims, losses, liabilities, obligations, costs and expenses, including reasonable legal, accounting and other expenses, and the costs and expenses of any and all actions, suits, proceedings, demands, assessments, judgments, settlements and compromises (individually, "Claim" or collectively, "Claims"), which arise out of the following:

(i) any material breach or violation by the Indemnifying Licensee of this Agreement or any agreement executed in connection with the performance of the HEA or this Agreement;

(ii) any breach of the HEA that does not constitute a Material Breach of the HEA;

(iii) any material breach or inaccuracy of any of the representations or warranties of the Indemnifying Licensee set forth herein; or

(iv) any Third Party Claim arising out of the active or passive negligence, gross negligence, or intentional misconduct of the Indemnifying Licensee, except for Third Party Claims treated as Eligible Costs pursuant to Section 3.4.

(b) Indemnification after Withdrawal or Material Breach of the HEA. In addition to the general indemnification obligations set forth in Section 6.1(a), if only one Licensee Withdraws or commits a Material Breach of the HEA and the remaining Licensee elects under Section 11.4.3 of the HEA to either perform the full scope of any Approved Habitat Expansion Plan or propose to NMFS an Alternative Habitat Expansion Plan that meets one-half of the Habitat Expansion Threshold, the remaining Licensee will indemnify and hold harmless the Withdrawing or breaching Licensee's Indemnified Group from and against any and all Claims which arise out of or relate to the remaining Licensee's Planning through Implementation of, or failure to fully implement, the Approved Habitat Expansion Plan or Alternative Habitat Expansion Plan, including Third Party Claims resulting from the construction of habitat expansion action(s), to the extent the events that gave rise to such Claims occurred after the Withdrawal or Material Breach of the HEA.

(c) Limitation on Indemnity Obligations. Neither Licensee shall be obligated to indemnify the other Licensee under this Section 6 against Claims that (i) are included in Eligible Costs, or (ii) arise out of or are related to the exercise by a party to the HEA of its right to impose or seek conditions for Fish Passage in either of the Licensees' Feather River Hydroelectric Projects pursuant to Section 15 of the HEA. In no event shall the remaining Licensee be obligated under this Section 6.1 to put the Licensee that Withdraws or commits a Material Breach of the HEA in a better commercial position than it would have been in had both Licensees exercised Withdrawal under Section 5.3.

(d) Tax, Insurance and Other Benefits. The amounts payable by the Indemnifying Licensee as compensation for Claims shall, to the extent applicable, be net of any tax benefit received by the Indemnified Group and shall be reduced by any applicable insurance or other payment recovered by the Indemnified Group as compensation for such Claims.

6.2 Notice of Claim. Subject to the terms of this Agreement and upon obtaining knowledge of a Claim for which it is entitled to indemnity under this Article 6, the Licensee entitled to indemnification (the "Indemnified Licensee") will promptly notify the Indemnifying Licensee in writing (a "Notice of Claim") of any damage, claim, loss, liability or expense that the Indemnified Licensee has determined has given or could give rise to a Claim. A Notice of Claim with respect to a Third Party Claim shall be given no later than seven (7) days after the Indemnified Licensee receives notice of such Third Party Claim. A Notice of Claim will specify, in reasonable detail, the facts known to the Indemnified Licensee regarding the Claim, including with respect to Third Party Claims a copy of the Third Party Claim, copies of all material written evidence thereof and, if reasonably practicable, the estimated amount of the Third Party Claim that has been or may be sustained by the Indemnified Group. Subject to the terms of this Agreement, the failure to provide (or timely provide) a Notice of Claim will not affect the Indemnified Group's rights to indemnification; provided, however, the Indemnifying Licensee is not obligated to indemnify the Indemnified Group for the increased amount of any Claim that would otherwise have been payable to the extent that the increase resulted from the failure to timely deliver the Notice of Claim.

6.3 Defense of Third Party Claims. The Indemnifying Licensee will have the right to participate in, or, by giving Notice to the Indemnified Licensee, to assume the defense of any Third Party Claim at the expense of such Indemnifying Licensee and by such Indemnifying Licensee's own counsel (as is reasonably satisfactory to the Indemnified Licensee), and the Indemnified Licensee will cooperate in good faith in such defense. If, within ten (10) days after giving a Notice of Claim regarding a Third Party Claim to an Indemnifying Licensee pursuant to Section 6.2, an Indemnified Licensee receives Notice from such Indemnifying Licensee that the Indemnifying Licensee has elected to assume the defense of such Third Party Claim, the Indemnifying Licensee will not be liable for any legal expenses subsequently incurred by the Indemnified Licensee in connection with the defense thereof; provided, however, that if the Indemnifying Licensee fails to take reasonable steps necessary to defend diligently such Third Party Claim within ten (10) days after receiving Notice from the Indemnified Licensee that the Indemnified Licensee believes the Indemnifying Licensee has failed to take such steps, or if the Indemnifying Licensee has not undertaken fully to indemnify the Indemnified Licensee as compensation for all Claims relating to the matter, the Indemnified Licensee may assume its own defense, and the Indemnifying Licensee will be liable for all reasonable costs or expenses,

including attorneys' fees, paid or incurred in connection therewith. Notwithstanding the provisions of this Section 6.3, an Indemnifying Licensee may elect to assume the defense of the Indemnified Licensee with a "reservation of rights," in which case the Indemnifying Licensee may subsequently claim a right of contribution for damages, costs and attorneys fees from the Indemnified Licensee. Without the prior written consent of the Indemnified Licensee, the Indemnifying Licensee will not enter into any settlement of any Third Party Claim which would lead to liability or create any financial or other obligation on the part of the Indemnified Licensee for which the Indemnified Licensee is not entitled to indemnification hereunder; provided, however, that the Indemnifying Licensee may accept any settlement without the consent of the Indemnified Licensee if such settlement provides a full release to the Indemnified Licensee and no requirement that the Indemnified Licensee acknowledge fault or culpability. If a firm offer is made to settle a Third Party Claim without leading to liability or the creation of a financial or other obligation on the part of the Indemnified Licensee for which the Indemnified Licensee is not entitled to indemnification hereunder and the Indemnifying Licensee desires to accept and agrees to such offer, the Indemnifying Licensee will give Notice to the Indemnified Licensee to that effect. If the Indemnified Licensee fails to consent to such firm offer within ten (10) days after its receipt of such Notice, the Indemnified Licensee may continue to contest or defend such Third Party Claim and, in such event, the maximum liability of the Indemnifying Licensee to such Third Party Claim will be the amount of such settlement offer, plus reasonable costs and expenses paid or incurred by the Indemnified Licensee up to the date of such Notice.

6.4 Direct Claims. The Indemnifying Licensee will have a period of sixty (60) days from receipt of a Notice of Claim with respect to a Direct Claim within which to respond to such Direct Claim. If the Indemnifying Licensee does not respond within such sixty-day period, the Indemnifying Licensee will be deemed to have rejected such Direct Claim. If the Indemnifying Licensee rejects such Direct Claim, the Indemnified Licensee will be free to seek enforcement of its rights to indemnification under this Agreement as a dispute subject to Section 7.13.

6.5 Subrogation of Rights. Upon making any indemnity Payment, the Indemnifying Licensee will, to the extent of such indemnity Payment, be subrogated to all rights of the Indemnified Licensee against any third party as compensation for the Claim to which the indemnity payment relates; provided that: (a) the Indemnifying Licensee is in compliance with its obligations under this Agreement relating to such Claim; and (b) until the Indemnified Licensee recovers its Claim, any and all claims of the Indemnifying Licensee against any such third party on account of said indemnity payment are hereby made expressly subordinated and subjected in right of payment to the Indemnified Licensee's rights against such third party. Without limiting the generality or effect of any other provision hereof, each such Indemnified Licensee and Indemnifying Licensee shall execute upon request all instruments reasonably necessary to evidence and perfect the above-described subrogation and subordination rights.

ARTICLE 7

MISCELLANEOUS AGREEMENTS AND ACKNOWLEDGMENTS

7.1 Representations and Warranties.

(a) Each Licensee represents and warrants to the other Licensee that: (i) it is duly organized and validly existing under all relevant Governmental Rules; (ii) it has full power and authority to enter into and can carry out its obligations under the HEA and this Agreement; (iii) its execution and performance of the HEA and this Agreement have been duly authorized by all necessary governance actions; and (iv) its execution of the HEA and this Agreement does and will not violate any applicable governing document, Governmental Rule, Governmental Approval or Consent.

(b) DWR represents that all funds to be provided by it under this Agreement are not subject to the availability of annually appropriated funds from the State of California. However, the availability of funds may be delayed due to the failure of the state legislature to pass an annual budget by the State constitutional deadline of June 15. If there is such a delay in the State's annual budget, DWR shall take prompt action to make the delayed funds available upon passage of the State's annual budget.

7.2 Force Majeure.

(a) Effect of Force Majeure. A Licensee shall not be considered to be in default in the performance of its obligations under this Agreement to the extent that the failure or delay of its performance is due to a Force Majeure Event, and the non-affected Licensee shall be excused from its corresponding performance obligations to the extent due to the affected Licensee's failure or delay of performance. Notwithstanding the forgoing, a failure to make payments when due that have accrued prior to the Force Majeure Event shall not be excused. The burden of proof for establishing the existence and consequences of a Force Majeure Event lies with the Licensee initiating the claim.

(b) Notice of Force Majeure. As soon as possible, but within reasonable time after the occurrence of an event the affected Licensee believes is a Force Majeure Event the Licensee desiring to invoke a Force Majeure Event as an excuse for delay in its performance of, or failure to perform, any obligation (other than the payment of money) hereunder, shall provide the other Licensee with Notice describing in detail the particulars of the occurrence giving rise to the Force Majeure Event including the expected duration and effect of such Force Majeure Event. Failure to provide timely Notice constitutes a waiver of a claim of a Force Majeure Event. Promptly, but in any event within ten (10) days unless otherwise agreed by the Licensees, after a Notice is effective pursuant to the preceding sentence, the Parties shall meet to discuss the basis and terms upon which the arrangements set out in this Agreement shall be continued taking into account the effects of such Force Majeure Event.

(c) Mitigation of Force Majeure. The suspension of performance due to a claim of a Force Majeure Event must be of no greater scope and of no longer duration than is required by the Force Majeure Event. Each Licensee suffering a Force Majeure Event shall take, or cause to be taken, such reasonable action as may be necessary to void, or nullify, or otherwise to mitigate, in all material respects, the effects of such Force Majeure Event. The Licensees shall take all reasonable steps to ensure resumption of normal performance under this Agreement after the cessation of any Force Majeure Event. Notwithstanding the foregoing, and without affecting the definition or effect under this Agreement of a Force Majeure Event, nothing contained herein

shall be construed to require a Licensee to settle any strike or labor dispute in which it may be involved.

7.3 Public and Agency Communications.

(a) Public Statements. Neither Licensee shall issue any press release or otherwise make any public statement with respect to this Agreement, the habitat expansion action(s) or the transactions contemplated hereby without the prior approval of the other Licensee, except as may be required by Governmental Rule or stock exchange rule, or except in accordance with Section 7.3(b) or as may be substantially consistent with Decisions of the Licensees relative to their respective obligations under this Agreement. Nothing in this Section is intended to affect the Licensees' obligations under Section 4.1(c).

(b) Government Communications. The Licensees recognize that the performance of the HEA and of this Agreement will require a significant amount of communication with Governmental Authorities and other interested Persons. Accordingly, the Licensees agree to cooperate in good faith to develop a mutually acceptable communications plan regarding the implementation of the HEA and of this Agreement as promptly as practicable, and to cooperate to implement such plan.

7.4 Confidentiality. Neither Licensee shall disclose any Confidential Information to a third party, other than: (a) such Licensee's employees, lenders, counsel, accountants, advisors, rating agencies, and potential lenders, each of whom has a need to know such information and has agreed to keep such terms confidential, including as to DWR, the State Water Project contractors who have signed a confidentiality agreement; (b) to the CPUC under seal for purposes of review; (c) disclosure of terms specified in and pursuant to this Section 7.4; or (d) in order to comply with any applicable Governmental Rule, including the California Public Records Act or any lawful order of an agency or court. In connection with disclosures made pursuant to any Governmental Rule, the disclosing Licensee shall, to the extent practicable, use reasonable efforts to: (i) notify the other Licensee prior to disclosing the Confidential Information; and (ii) attempt to limit such disclosure, but only if it is legally defensible. The Licensees shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation. The confidentiality obligation hereunder shall not apply to any information that was or hereafter becomes available to the public other than as a result of a disclosure in violation of this Section 7.4. If this Agreement is terminated pursuant to Section 7.17, each Licensee will promptly return or certify the destruction of, if so requested by the other Licensee, any Confidential Information provided to it and will use commercially reasonable efforts to return any copies thereof that may have been provided to others in accordance with this Section 7.4. The obligations of the Licensees in this Section 7.4 will survive the termination of this Agreement and the discharge of all other obligations owed by the Licensees to each other for a period of two years thereafter.

7.5 Audit Rights. Each Licensee agrees that the other Licensee or its designated representatives or a Government Authority with authority to require an audit shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Agreement. Each Licensee agrees to maintain such records for possible audit for a

minimum of three (3) years after the termination of this Agreement. Each Licensee agrees to allow the other Licensee's auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, each Licensee agrees to include similar rights to audit records and interview staff in any contract that may be entered into relating to the performance of this Agreement.

7.6 Expenses. Except as otherwise provided herein, each Licensee is responsible for its own costs and expenses (including attorneys' and consultants' fees, costs and expenses) incurred in connection with this Agreement and the consummation of the transactions contemplated by this Agreement.

7.7 Entire Document. This Agreement and the HEA contain the entire agreement between the Licensees with respect to the transactions contemplated hereby, and supersede all negotiations, representations, warranties, commitments, offers, contracts and writings prior to the later of the execution date of this Agreement or the execution date of the HEA, whether written or oral. No waiver and no modification or amendment of any provision of this Agreement is effective unless made in writing and duly signed by the Licensees referring specifically to this Agreement, and then only to the specific purpose, extent and interest so provided. No oral understanding or Agreement not incorporated in the Agreement is binding on the Licensees.

7.8 Counterparts. This Agreement may be executed in one or more counterparts, each of which is an original, but all of which together constitute one and the same instrument.

7.9 Severability. If any provision hereof is held invalid or unenforceable court of competent jurisdiction or as a result of future legislative action, that holding or action will be strictly construed and will not affect the validity or effect of any other provision hereof.

7.10 Assignability. This Agreement is binding upon and inures to the benefit of the successors and assigns of the Licensees, but is not assignable by any Licensee without the prior written consent of the other Licensee, which consent may be granted or withheld in such Licensee's sole discretion, provided, however, that with respect to an assignment in conjunction with a FERC-approved transfer of a hydroelectric license, such consent may not be unreasonably withheld or delayed. Any such assignment is conditioned on the assignee's agreement in writing to assume the assigning Licensee's duties and obligations under the HEA, this Agreement and any relevant agreements entered into by the assigning Licensee in the implementation of the HEA or this Agreement. Any assignment effected in accordance with this Section 7.10 shall relieve the assigning Licensee of its obligations and liabilities under this Agreement and the HEA except to the extent otherwise agreed by the Licensees.

7.11 Captions. The captions of the various Articles and Sections of this Agreement have been inserted only for convenience of reference and do not modify, explain, enlarge or restrict any of the provisions of this Agreement.

7.12 Governing Law. The validity, interpretation and effect of this Agreement are governed by and will be construed in accordance with the laws of the State of California applicable to contracts made and performed in such State and without regard to conflicts of law doctrines except to the extent that certain matters are preempted by Federal law.

7.13 Dispute Resolution. This Section 7.13 shall govern the resolution of disputes exclusively between the Licensees under the HEA or this Agreement ("Dispute Resolution"). This Section shall also govern the inability to reach an agreement on a recommendation or a Decision under Article 2. The Licensees shall continue to perform their obligations under this Agreement during the resolution of any dispute.

(a) Management Negotiations.

(i) Each Licensee by Notice to the other Licensee shall appoint a management employee who shall be authorized to act on its behalf in the capacity of "Manager", as such capacity is described in this Section 7.13(a)(i). The Licensees will attempt in good faith to resolve any controversy or claim between them arising out of or relating to the HEA or this Agreement, other than a dispute arising under Section 5.3(b), by prompt negotiations between each Licensee's Manager. Any Manager may request a meeting (in person or telephonically) to initiate negotiations to be held within ten (10) Business Days of the other Licensee's receipt of such request, at a mutually agreed time and place. If the matter is not resolved within fifteen (15) Business Days after their first meeting, the Managers shall refer the matter to the designated senior management employees of their respective organizations ("Executive(s)"), who shall have authority to settle the dispute. Within five (5) Business Days of the date of such referral ("Referral Date"), each Licensee shall provide the other Licensee Notice confirming the referral and identifying the name and title of the Executive who will represent the Licensee, which Executives shall be at least at the level of Deputy Director for DWR and Senior Director for PG&E.

(ii) Within five (5) Business Days of the Referral Date the Executives shall establish a mutually acceptable location and date to meet, which date shall not be greater than thirty (30) days from the Referral Date. After the initial meeting date, the Executives shall meet as often as they reasonably deem necessary to exchange relevant information and to attempt to resolve the dispute.

(iii) All communication and writing exchanged between the Licensees in connection with these negotiations shall be confidential and shall not be used or referred to in any subsequent binding adjudicatory process between the Licensees.

(iv) If the matter is not resolved within forty-five (45) days of the Referral Date, or if the Licensee receiving the written request to meet, pursuant to Section 7.13(a)(i) above, refuses to, or does not, meet with the other Licensee within one or more of the applicable time periods specified in Section 7.13(a)(i) above, either Licensee may initiate mediation of the controversy or claim according to the terms of the following Section 7.13(b).

(b) Mediation. If the dispute cannot be resolved by negotiation as set forth in Section 7.13(a) above, the Licensees agree to submit the dispute to non-binding mediation pursuant to the commercial mediation rules of the American Arbitration Association ("AAA"), in either San Francisco or Sacramento, California. If the requirements of Section 7.13(a)(iv) are met, either Licensee may begin mediation by serving a written demand for mediation. The mediator must be an individual who is experienced in the matters in dispute. The Licensees shall select the mediator jointly within fifteen (15) Business Days of the date the written demand for mediation is received. If the Licensees do not appoint a mediator as required by the previous

sentence, then either Licensee may cause the AAA to appoint the mediator. The mediator shall not have the authority to require, and neither Licensee may be compelled to engage in, any form of discovery prior to or in connection with the mediation. If within sixty (60) days after appointment of the mediator, the mediation does not result in resolution of the dispute, then either Licensee shall have the right to pursue any remedy it may have in law or equity except to the extent provided in Section 7.13(c).

(c) Arbitration. Any dispute arising out of Section 5.3(b) shall be subject to binding arbitration as provided in this Section 7.13(c) ("Arbitration").

(i) Within sixty (60) days of the Licensees' submittal of the Final Design and Permitting Report under Section 4.6 of the HEA or thirty (30) days after a Licensee provides Notice of a dispute under Section 5.3(b) of this Agreement, whichever occurs first, the Licensees shall decide upon an independent third party mutually acceptable to both Parties (the "Arbitrator") and an alternate independent third party (the "Alternate") to decide disputes under Arbitration. If the Licensees do not agree on a Arbitrator or Alternate, then the offices of the AAA in Sacramento, California shall be requested to select the Arbitrator or the Alternate, as appropriate, provided that the Arbitration will not be administered by the AAA or governed by the rules of the AAA. The Arbitrator and the Alternate shall each have a minimum of ten years' experience as engineers experienced in the construction of facilities of similar size and complexity as the habitat expansion action(s).

(ii) If a Licensee provides Notice of a dispute under Section 5.3(b), both Licensees shall immediately notify their Executives, as defined in Section 7.13(a)(i), to provide an opportunity for the Executives to attempt to resolve the dispute. If any dispute arising out of Section 5.3(b) has not been resolved by the Licensees within ten (10) Business Days after a Licensee gives Notice of the dispute under Section 5.3(b), the dispute shall be referred to Arbitration by Notice by either Licensee to the Arbitrator and the other Licensee. If the Arbitrator is unavailable to resolve the dispute within the time period stated in this Section, the dispute shall be referred to the Alternate. The Arbitration shall be conducted in either the City and County of San Francisco or the City of Sacramento, as selected by the Arbitrator (or Alternate).

(iii) Each Licensee shall submit all information it deems relevant to the dispute to the Arbitrator or the Alternate, as the case may be, within fifteen (15) Business Days of commencement of the Arbitration, together with a detailed description of its proposed resolution of the dispute. The Arbitrator (or Alternate) shall be directed to determine the Total Eligible Costs within the range of estimates presented by the Licensees within ten (10) Business Days of its receipt of the proposed resolutions. The Parties shall cooperate in good faith in providing to the Arbitrator (or Alternate) with any additional information (s)he may request to resolve the dispute. The decision of the Arbitrator (or Alternate) shall be final, binding on the Licensees and non-appealable. The resolution determined by the Arbitrator (or Alternate) shall contain detailed technical grounds for his decision and all the documentation that underlies his decision.

(d) Waiver of Remedies. To the extent the dispute relates to a habitat expansion action under Section 4 of the HEA that involves or would involve activities within the

boundary of a FERC-licensed hydroelectric project operated by one of the Licensees (the "Operating Licensee"), the Operating Licensee shall have the right to determine (i) whether such habitat expansion action should be selected by the Licensees for recommendation to NMFS pursuant to Section 4 of the HEA, and (ii) the manner of implementation of any such habitat expansion action pursuant to this Agreement. The other Licensee waives the right to any remedy which would require any action by the Operating Licensee with respect to the matters described in the previous sentence other than the payment of money damages. The other Licensee's only remedy with respect to any such habitat expansion action shall be the payment of money damages pursuant to a determination of the appropriate allocation of the obligation to Pay the Eligible Costs of the relevant habitat expansion action, giving due consideration to the failure of the Operating Licensee to take actions requested by the other Licensee.

7.14 Limitations on Liability. UNLESS EXPRESSLY HEREIN PROVIDED, NEITHER LICENSEE SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE, EXCEPT UNDER ARTICLE 6 RELATING TO THIRD PARTY CLAIMS FOR DAMAGE TO OR DESTRUCTION OF PROPERTY OF (WHICH FOR PURPOSES HEREOF SHALL BE DEEMED TO INCLUDE AMOUNTS PAID TO THIRD PARTIES AS A RESULT OF OR RELATING TO ENVIRONMENTAL LAW LIABILITIES), OR DEATH OF OR BODILY INJURY TO, ANY PERSON ARISING OUT OF OR RELATED TO THIS AGREEMENT. UNLESS EXPRESSLY HEREIN PROVIDED, AND SUBJECT TO THE PROVISIONS OF ARTICLE 6, IT IS THE INTENT OF THE LICENSEES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES, INCLUDING THE LIMITATIONS OF LIABILITY AND THE EXCLUSION OF CONSEQUENTIAL DAMAGES, BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY LICENSEE, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE, AND SHALL APPLY IRRESPECTIVE OF WHETHER A LICENSEE OR ANY AFFILIATE THEREOF, OR ANY PARTNER, MEMBER, SHAREHOLDER, OFFICER, DIRECTOR OR EMPLOYEE OF A LICENSEE OR AN AFFILIATE THEREOF, ASSERTS A THEORY OF LIABILITY IN CONTRACT, TORT, NEGLIGENCE, MISREPRESENTATION (INCLUDING NEGLIGENT MISREPRESENTATION), STRICT LIABILITY, STATUTORY LIABILITY, OR ANY THEORY OF LIABILITY.

7.15 Notices. All Notices, requests, demands and other communications under this Agreement must be in writing and must be delivered in person, sent by confirmed tele-facsimile, or by overnight delivery using a nationally recognized delivery service, and properly addressed as follows:

If to DWR:

Deputy Director, State Water Project
Department of Water Resources
P.O. Box 942836
Sacramento, CA 94236-0001

Fax No.: (916) 653-5028

With a copy to:

Chief Counsel
Department of Water Resources
P.O. Box 942836
Sacramento, CA 94236-0001
Fax No.: (916) 653-0952

Invoices shall be sent to the DWR Authorized Representative and to:

DWR Accounting Office
Contracts Payable Unit
Department of Water Resources
P.O. Box 942836
Sacramento, CA 94236-0001

If to PG&E:

Pacific Gas and Electric Company
245 Market Street
San Francisco, California 94105
Attention: Vice President – Power Generation
Fax No.: (415) 973-3967

With a copy to:

Pacific Gas and Electric Company
77 Beale Street
San Francisco, California 94105
Attention: Director and Counsel of Generation, Law
Fax No.: (415) 973-5520

Invoices shall be sent to the PG&E Authorized Representative and to:

Pacific Gas and Electric Company
P.O. Box 770000, Mail Code N11D
San Francisco, CA 94177-0001
Attention: Alvin Thoma, Director, Power Generation Department
Fax No.: (415) 973-5121

Any Licensee may from time to time change its addresses for the purpose of Notices to that Licensee by a similar Notice specifying a new address, but no such change is effective until it is actually received by the Licensee sought to be charged with its contents.

All Notices and other communications required or permitted under this Agreement which are addressed as provided in this Section 7.15 are effective upon delivery.

7.16 Time is of the Essence. Time is of the essence for each term of this Agreement. Without limiting the generality of the foregoing, all times provided for in this Agreement for the performance of any act will be strictly construed.

7.17 Termination.

(a) Termination of HEA. This Agreement shall terminate upon the termination of the HEA.

(b) Withdrawal. This Agreement shall terminate as provided in Section 5.4(c) or 5.5(a).

(c) Rights To Terminate. This Agreement may, by Notice given in the manner provided in Section 7.15, be terminated as provided below:

(i) by DWR if there has been a material default or breach by PG&E in the due and timely performance of any of PG&E's covenants and agreements contained in this Agreement, and such default or breach is not cured: (1) within ten (10) days of Notice from DWR specifying particularly such default or breach in the case of any of PG&E's Payment obligations; or (2) within thirty (30) days of Notice from DWR specifying particularly such default or breach in all other cases, provided, however, no right of termination shall arise under this subsection (2) if such default or breach is not able to be cured in such thirty-day period, and PG&E is in the process of curing the default or breach in such thirty-day period and shall have cured the default or breach within ninety (90) days of Notice from DWR thereof;

(ii) by PG&E if there has been a material default or breach by DWR in the due and timely performance of any of the DWR's covenants and agreements contained in this Agreement, and such default or breach is not cured: (1) within ten (10) days of Notice from PG&E specifying particularly such default or breach in the case of any of DWR's Payment obligations; or (2) within thirty (30) days of Notice from PG&E specifying particularly such default or breach in all other cases, provided, however, no right of termination shall arise under this subsection (2) if such default or breach is not able to be cured in such thirty-day period, and DWR is in the process of curing the default or breach in such thirty-day period and shall have cured the default or breach within ninety (90) days of Notice from PG&E thereof;

(iii) by mutual agreement of the Licensees.

(d) Effect of Termination. If this Agreement is terminated pursuant to Section 7.17(a), all further obligations and liabilities of the Licensees hereunder will terminate, except: (i) as otherwise contemplated by this Agreement; (ii) obligations to pay money which are in existence and not satisfied at the time of the termination; and (iii) the obligations set forth in Article 6 or in Sections 7.3, 7.4, 7.5, 7.6, 7.9, 7.10, 7.11, 7.12, 7.13, 7.14, 7.15, 7.16, 7.18, 7.20, 7.21 or 7.22. Upon termination, the originals of any Confidential Information (which is still confidential under the terms of this Agreement at such termination) provided by one Licensee to

the other Licensee will be returned or destroyed by the receiving Licensee as described in Section 7.4.

7.18 No Third Party Beneficiaries. Except as may be specifically set forth in this Agreement, nothing in this Agreement, whether express or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any Persons other than the Licensees and their respective permitted successors and assigns, nor is anything in this Agreement intended to relieve or discharge the obligation or liability of any third Persons to any Licensee, nor give any third Persons any right of subrogation or action against any Licensee.

7.19 No Joint Venture; Independent Contractors. Nothing contained in this Agreement creates or is intended to create an association, trust, partnership, or joint venture or impose a trust or partnership duty, obligation, or liability on or with regard to any Licensee. The Licensees, and the agents and employees of the Licensees, in the performance of this Agreement, shall act in an independent capacity and not as officers or employees or agents of the other Licensee.

7.20 Construction of Agreement. Ambiguities or uncertainties in the wording of this Agreement will not be construed for or against any Licensee, but will be construed in the manner that most accurately reflects the Licensees' intent as of the date they executed this Agreement.

7.21 Conflicts. In the event of any conflicts or inconsistencies between the terms of this Agreement and the terms of the HEA, the terms of the HEA will govern and prevail.

7.22 Set-off Rights. Each Licensee shall have the right to withhold for the purposes of set-off any Payments due to the other Licensee under this Agreement in an amount not exceeding any amounts that are past due from such other Licensee hereunder.

7.23 Effective Date. This Agreement shall only be effective after execution by both Licensees and approval by the California Department of General Services. Neither Licensee shall commence performance until such approval has been obtained. DWR shall provide PG&E with documentation of California Department of General Services' approval in the form of Exhibit A to this Agreement.

7.24 Public Code 7110. PG&E acknowledges in accordance with Public Contract Code 7110, that:

(a) it recognizes the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with section 5200) of Part 5 of Division 9 of the Family Code; and

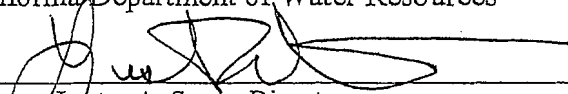
(b) to the best of its knowledge it is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.

IN WITNESS THEREOF,

the Licensees, intending to be legally bound, have caused this Agreement to be executed through their duly authorized representatives.

California Department of Water Resources


by



Lester A. Snow, Director

Pacific Gas and Electric Company

by



Randal S. Livingston

Vice President, Power Generation

Agreement Effective Date:

Approved by the California Department of
General Services on December 20, 2007